



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Support Systems Associates, Inc.

File: B-232473, B-232473.2

Date: January 5, 1989

DIGEST

1. Protest that agency improperly downgraded management and technical portions of protester's proposal is denied where record shows that agency's evaluation of protester's proposal was reasonable and in accordance with the stated evaluation criteria.

2. Protest that agency did not conduct a proper cost realism analysis of awardee's proposal is denied where, even though agency accepted awardee's low overhead rates, these rates are capped under contract and thus the contractor will be limited to charging the government those rates. Moreover, regardless of the propriety of the cost realism analysis, the management and technical portions of protester's proposal were determined to be unacceptable and, thus, it would not have been in line for award in any event.

3. Sole-source award on urgency grounds is unobjectionable where agency offers reasonable justification for award and awarded contract is limited in scope to cover only urgently needed requirement.

DECISION

Support Systems Associates, Inc. (SSAI) protests the award of a contract to Comarco, Inc. under request for proposals (RFP) No. N60530-87-R-0063 issued by the Department of the Navy's Naval Weapons Center (NWC), China Lake, California, for the acquisition of engineering and technical support services. SSAI also protests the Navy's execution of a modification under the current contract No. N60530-83-D-0024 for continued engineering and technical support services to be performed by Comarco at the NWC. SSAI argues that the Navy failed to evaluate proposals in accordance with the RFP's evaluation criteria because it improperly downgraded the management and technical portions of its proposal, and failed to perform an adequate cost realism analysis of

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Comarco's cost proposal. As to the modification of the current contract, SSAI argues that the modification is beyond the scope of the original contract and as such constitutes an improper sole source award to Comarco.

We deny the protests.

The solicitation was issued in January 1987 and contemplated the award of a cost-plus-award-fee type indefinite delivery contract. Award was to be made on a "best buy" basis. Cost, management and technical were listed as evaluation factors in descending order of importance. Initial offers were to be submitted in June of 1987 and, of the 127 firms that originally expressed an interest in the RFP, only two--Comarco and SSAI--responded to the solicitation.

After evaluation of initial offers, the contracting officer (CO) concluded, based upon recommendations from the source selection evaluation board (SSEB) and the source selection advisory committee (SSAC), that SSAI's proposal was unacceptable. The CO also found that there were only minor deficiencies contained in the Comarco proposal and resolved to make award on the basis of initial proposals. The CO found that Comarco had submitted the low cost offer based on evaluated cost. The CO prepared a pre-negotiation business clearance memorandum in which he recommended award to Comarco and forwarded it to the Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics (OASN), for approval prior to award.

The OASN declined to grant the approval. Instead, he concluded that the evaluation of proposals had not been conducted in accordance with the RFP's evaluation criteria because the numeric scores and narrative statements which had been promulgated by the evaluators did not in all cases agree, and instructed the NWC to conduct discussions with both offerors and to submit the written discussion questions for approval by the OASN prior to submission to the offerors. The NWC was also instructed to amend the solicitation so that it provided, among other things, that unrealistically low proposed costs would be capped at the proposed level in any resulting contract.

Written and oral discussions were then conducted with both offerors after which both firms submitted best and final offers (BAFOs). Comarco's BAFO was comprised of responses to the written discussion questions and a revised cost proposal, while SSAI submitted an entirely new and substantially revised proposal. BAFOs were then evaluated and SSAI was found unacceptable on the technical and

management portions of its proposal; Comarco was found acceptable and its low proposed cost was also evaluated as low. Upon the recommendation of the SSEB and SSAC, the CO prepared a post-negotiation business clearance memorandum recommending award to Comarco. The post-negotiation business clearance memorandum was approved by the OASN and award was made to Comarco on August 25, after the agency denied an agency-level protest filed by SSAI.

Thereafter, on August 31, SSAI filed its initial protest with our Office. Since the protest had been filed within 10 calendar days of award, the agency issued a stop-work order pursuant to the Competition in Contracting Act (CICA), 31 U.S.C. § 3553 (Supp. IV 1986). The agency, however, determined that it needed continued engineering and technical support services, and on September 21 issued modification No. P00043 to contract No. N60530-83-D-0024, extending performance of that contract with Comarco for approximately four months until January 31, 1989.

On September 27, SSAI filed a letter of protest in our Office arguing that the modification was improper. Performance under the modification initially was suspended, but on September 30, the NWC issued a determination and finding (D&F) overriding the stay and permitting Comarco's performance under contract No. N60530-83-D-0024.

SSAI first argues that the Navy failed to fairly and adequately evaluate its management proposal. Specifically, SSAI argues that the Navy's evaluation of its management proposal erroneously concluded that SSAI's management philosophy reflected an undesirable high level of corporate control. According to SSAI, its proposal clearly reflects local control of operations at the NWC and that it proposed to establish its corporate functions at the installation with primary authority for NWC operations vested in a newly created vice president's office. SSAI therefore alleges that the Navy's evaluation of its management proposal was unreasonable.

The Navy responds that SSAI misunderstood the contracting officer's statement regarding SSAI's high level of corporate control. According to the Navy it meant that, within the organizational structure proposed by SSAI for the NWC, there existed an undesirable high level of corporate control evidenced by an unmanageably broad decision-making authority being vested in the vice president for NWC operations. The Navy goes on to explain that it agrees with the protester's assertion that the SSAI proposal evidenced local autonomy of the NWC operation.

We agree with the Navy that the protester's concern arises primarily out of a misinterpretation of the CO's statements. Our review of the record shows that SSAI's management proposal was not downgraded for reasons relating to the organizational relationship between the proposed NWC operation and SSAI's corporate headquarters. Rather, the evaluators were concerned with the focus of decision-making authority at the highest levels within the proposed NWC organization with the attendant potential for a "bottleneck" in the decision-making process. In addition, the record shows that the evaluators were concerned over the possibility that the upper-level management staff proposed by SSAI would be ineffective because of the range and complexity of responsibilities with which they were charged. SSAI does not challenge these conclusions nor does it show how the Navy's evaluation of its proposal deviated from the stated evaluation criteria. We therefore deny this basis of protest.

SSAI next argues that the Navy improperly evaluated its technical proposal. In particular it argues that the Navy allegedly failed to take into account the illustrative work samples submitted by SSAI which, according to the protester, are directly relevant to the tasks set out in the statement of work (SOW). SSAI also argues that it must have been technically acceptable because the Navy invited the firm to submit a BAFO. In support of its allegation, SSAI directs our attention to the OASN correspondence to the NWC which was written in response to the NWC's initial business clearance memorandum. SSAI specifically notes that in that correspondence the OASN stated that evaluation of proposals was not in accordance with the RFP's evaluation criteria and that the evaluators' numeric scores were not supported by their narrative statements. SSAI also points out that in 11 specific SOW areas its BAFO rating was "unacceptable" whereas, in these same areas, its initial rating was marginal or better. According to SSAI this tends to show that its proposal was not properly evaluated since its "improved" BAFO received a lower score.

The Navy responds that the work samples submitted by SSAI, in fact, tended to show that the firm misunderstood the requirements of the SOW. The Navy also points out that SSAI's inclusion in the competitive range for purposes of the submission of BAFOs does not per se show that the firm's proposal was technically acceptable. Additionally, the Navy notes that the OASN correspondence which SSAI relies upon is irrelevant since proposals were completely reevaluated after the submission of BAFOs. Finally, the Navy states that the drop in SSAI's technical rating in the 11 specific categories from marginal to "unacceptable" is

explained by the fact that "marginal" ratings were not used in the evaluation of BAFOs since offerors would not thereafter have an opportunity to further revise their proposals; the offerors were rated either "acceptable" or "unacceptable" in the evaluation of BAFOs.

We think that SSAI has failed to show that the Navy's evaluation of its proposal was unreasonable. As to the applicability of the illustrative work samples to the SOW tasks, SSAI has done little more than generally aver that the samples in fact demonstrate the firm's ability to perform the outlined tasks. We view this as showing nothing more than SSAI's disagreement with the Navy's evaluation. For example, under illustrations and presentations, the evaluators found that SSAI's illustrations showed poorly printed artwork with uneven line thickness and fuzzy edges. The evaluators concluded that SSAI had not shown the capability to produce art work that the Navy would find acceptable. The evaluators also found SSAI's experience primarily was in drafting, not illustration, which requires different experience and resources. We do not find the evaluation in this regard unreasonable.

Regarding the statements in the OASN correspondence, we agree with the Navy that these statements are irrelevant to a consideration of whether SSAI's BAFO was properly evaluated. The OASN statements refer to the evaluation of initial offers, not BAFOs, and in fact BAFOs were requested to correct any evaluation problems. As the Navy correctly points out, the OASN concurred in the NWC's evaluation of BAFOs by approving the post-negotiation business clearance memorandum. We also have no reason to question the Navy's explanation of the change in SSAI's BAFO ranking for the 11 identified SOW areas. A careful examination of the evaluation shows that, in fact, "marginal" ratings were not used in the evaluation of BAFOs and, further, that SSAI's overall rating went up between initial offers and BAFOs.

Finally, we note that SSAI has appended a long list of alleged errors committed by the NWC in its evaluation of SSAI's proposal. Aside from the questionable timeliness of the submission of this list in SSAI's comments filed after we held a bid protest conference, we are inclined to agree with the agency that the list is comprised of errors that

are at best trivial in nature or indicate disagreement with the agency evaluation, and do not serve to show that the agency's evaluation was clearly unreasonable.^{1/} We therefore deny this basis of SSAI's protest.

SSAI next argues that the Navy failed to perform a proper cost realism analysis of Comarco's proposal. SSAI specifically argues that the Navy improperly utilized Comarco's uncapped proposed rates for direct labor overhead (DLO) and general and administrative overhead (G&A) for evaluation purposes, even though those rates were found by the Navy to be unrealistically low. SSAI also argues that the Navy improperly added \$15 million to the Comarco contract for phase-in-phase-out (PIPO) services after making its source selection. According to SSAI, the \$15 million is an unreasonably high amount for PIPO services, represents an improper post-selection modification to the contract and should have been considered within the scope of the Navy's cost realism analysis.

The Navy responds that, while it did find Comarco's proposed DLO and G&A rates unrealistically low, it made no upward adjustment thereto because these rates would be capped in any resulting contract. The Navy also asserts that, as to the PIPO costs, this element was identified in the solicitation as a non-evaluated cost element and was properly excluded from consideration during the Navy's cost realism analysis. The Navy also notes that the \$15 million proposed by Comarco for PIPO costs is merely a "not to exceed" figure which will be negotiated pursuant to the terms of the RFP when sufficient information becomes available to make such negotiations meaningful.

We find the agency's cost realism determination was reasonable. Where, as here, a cost reimbursement contract is to be awarded, the cost realism analysis is used to determine what costs actually would be incurred by acceptance of a particular proposal, since offerors' estimated costs of contract performance and their proposed fees may not provide valid indications of final actual costs which the government is required, within certain limits, to pay. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. Here, while the agency is accepting Comarco's admittedly

^{1/} By way of example, we quote the following item from SSAI's list of errors: "NWC Evaluation: 'Offeror's [voucher] procedures are unacceptable. System is operated on PCs with floppy disks. . . .' Facts: The word 'floppy' never appears in the proposal."

unrealistically low DLO and G&A rates, these rates are capped and thus are the actual rates which the government will pay.^{2/} Thus, no upward adjustment of these rates was necessary. Further, we agree with the Navy that the "not to exceed" figure for PIP0 services inserted into the Comarco contract clearly was an unevaluated cost item under the RFP and was properly excluded from the Navy's cost realism analysis of Comarco's proposal. Moreover, we note that, as pointed out by the Navy, this amount is to be the subject of good faith negotiations between the parties and such funds cannot by definition properly be used for other than PIP0 services. Finally, regardless of the propriety of the cost realism analysis, SSAI's management and technical proposal was unacceptable and SSAI would not be in line for award in any event.^{3/} Tero Tek International, Inc., B-228548, Feb. 10, 1988, 88-1 CPD ¶ 134. We therefore deny this ground of protest.

SSAI lastly argues that modification No. P00043 to contract No. N60530-83-D-0024 constitutes an improper sole source award to Comarco in violation of CICA's requirement for full and open competition. SSAI argues that the award cannot be justified on grounds of urgent and compelling circumstances pursuant to 10 U.S.C. § 2304(c)(2) (Supp. IV 1986). According to SSAI, the NWC failed to engage in adequate planning for the acquisition, the NWC failed to solicit SSAI before awarding modification P00043 and the services are not, in fact, urgently needed.

The Navy admits that the modification exceeds the scope of the original contract but argues that it is justified due to urgent and compelling circumstances. In particular, the Navy states that the test services under the subject modification are urgently needed in support of a number of significant weapons systems and that an interruption of those services would be detrimental to the interests of the

^{2/} A comparison of Comarco's proposed DLO and G&A rates for this contract with the firm's rates under the predecessor contract shows that the proposed rates are substantially lower than the actual rates under the predecessor contract.

^{3/} We also note that SSAI alleges that its costs were not "normalized" vis-a-vis all offerors consistent with an understanding it allegedly reached with the agency during discussions. The agency disputes SSAI's understanding of the agreement reached during discussions, however, since SSAI's BAFO was unacceptable notwithstanding its cost evaluation, we need not resolve this issue.

United States and could significantly impact national security. The Navy also argues that it did not revive an otherwise expired contract because, while delivery orders could not be issued under the contract after July 31, the contract did call for continued performance (including PIPPO services) for an additional 60 days until September 30. Finally, the Navy argues that it was justified in not soliciting a proposal from SSAI because it knew, based upon its evaluation of the firm's proposal under the subject RFP, that the firm was not capable of performing the contract.

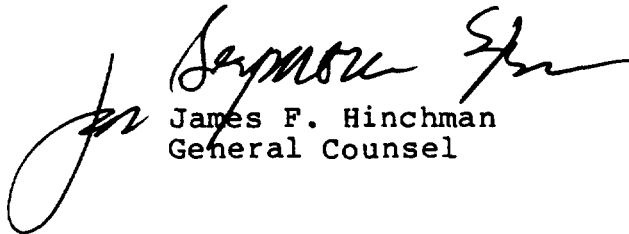
In light of the fact that both parties agree that the modification is beyond the scope of the original contract we think that the central issue to be resolved is whether the sole-source award was properly justified.

As a general rule, a procurement must be conducted using competitive procedures. 10 U.S.C. § 2304(a)(1). However, an agency may use other than competitive procedures where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency did not limit the number of sources from which bids or proposals are solicited. 10 U.S.C. § 2304(c)(2); Federal Acquisition Regulation § 6.302-2(a)(2) (FAC 84-38). When using other than competitive procedures based on urgency, the agency is required to request offers from as many potential sources as is practicable under the circumstances. 10 U.S.C. § 2304(e); FAR § 6.302-2(c)(2). An agency, however, has the authority under 10 U.S.C. § 2304(c)(2) to limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. Honeycomb Company of America, B-227070, Aug. 31, 1987, 87-2 CPD ¶ 209. We will object to the agency's determination to limit competition based on unusual and compelling urgency only where we find that the agency's decision lacks a reasonable basis. Dynamic Instruments, Inc., B-220092, et al., Nov. 25, 1985, 85-2 CPD ¶ 596.

Here we are satisfied that the agency has adequately justified the award to Comarco. As noted above, a number of significant weapons systems tests were scheduled to be conducted during the period of performance contemplated by the modification, and we have no basis on this record for concluding that these tests are not critical to the interests of the United States. In addition, we agree that the Navy was entitled to rely upon the fact that SSAI's proposal under the follow-on RFP was unacceptable in concluding that Comarco was its only available source. We also do not think that the Navy failed to engage in adequate planning for this acquisition. The Navy's efforts in terms of planning this acquisition began almost two years ago and

provided for a certain margin of error. The fact that unexpected delays were encountered during the procurement process is not, in our opinion, sufficient evidence to show that the Navy inadequately planned the acquisition.

The protests are denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel